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53CONFIDENTIALDecember 4th, 1959COCOM Document No. 3795COORDINATING COMMITTEERECORD OF DISCUSSIONONA UNITED KINGDOM PROPOSAL TO EXPORT KLYSTRONS TO THE SOVIET ZONE OF GERMANYNovember 30th, 1959

Present: Canada, France, Germany, Italy, Japan, Netherlands, United Kingdom, United States.

References: COCOM Documents Nos. 3564, 3602, 3758, 3759.

1. The CHAIRMAN drew the attention of the Committee to the United Kingdom proposal (COCOM 3759) to export 10 Klystrons to service equipment previously supplied to the television service in the Soviet zone of Germany. He invited Delegates to give the views of their authorities.

2. The UNITED STATES Delegate said that this was a particularly interesting case because the Klystrons in question were intended to be used to service equipment which was caught by the embargo by virtue of the way in which it was being used. The views of the United States authorities on radio relay equipment were well known and they saw no circumstances to warrant exports for servicing equipment which had been diverted to the strategic uses against which the embargo was directed. They did not feel that such legal complications as might arise if these servicing shipments were not permitted should be considered as a controlling factor when dealing with an important type of security question. The Delegate added that he hoped soon to be able to make available to the United Kingdom Delegation the more detailed comments of his authorities on the legal aspects of this case. He continued that his authorities did not think that the servicing procedure should be construed to cover the provision of embargoed items for equipment used for purposes at which the embargo aimed, any more than this procedure could be used to provide for the servicing of embargoed equipment originally acquired by illegal means. The Delegate thought that it might be useful at a later date to make this clear in the Committee's servicing procedure.

3. The CHAIRMAN pointed out that Delegations who did not comment on the general aspects of the case at this stage were in no way compromising their position should the servicing procedure be discussed in the Committee at a later date.

4. The GERMAN Delegate said that his authorities had given this case particularly careful study. They were not completely convinced that this export was justified simply because the equipment it was intended to service had already been delivered. The United Kingdom memorandum (COCOM 3759, paragraph 2) stated that the manufacturers had been deceived as to the use to which the original equipment would be put, thus it would seem that the purchasers had no further claim for service. The German authorities found it difficult to concur with the United Kingdom suggestion for automatic replacement of defective Klystrons as this became necessary but they would consider favourably ad hoc submissions for the export of the minimum number necessary for the working of the radio links for a given time period since his authorities did not consider the use of hertzian links between television transmitters to be highly strategic.

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5. The UNITED KINGDOM Delegate, referring to his German colleague's suggestion, pointed out that paragraph 6(i) of COCOM 3759 already gave details of the minimum number of Klystrons necessary.
6. The FRENCH Delegate stated that the United Kingdom authorities had made it clear in their memorandum that they had acted in good faith when authorising the original export, since they did not consider at the time that the equipment concerned was caught by the embargo. The French authorities considered this explanation satisfactory and therefore considered that the normal framework of the servicing procedure was applicable in this case. Contrary to the opinion expressed by the German Delegation, his authorities considered this to be a reasonable exceptions request. The Delegate drew the Committee's attention to paragraph 6 of the United Kingdom memorandum in which it was pointed out that the arrangements contemplated would ensure that no net addition was made to the number of Klystrons available to the East German authorities. His authorities were satisfied by this assurance and felt that there was no reason why this export was not warranted. Referring next to the legal aspect of the case, the Delegate said that his authorities understood that the United Kingdom Government would be placed in an embarrassing position if this export were refused. The essential fact was that the equipment had been sold in good faith and although it was now put to a different use from that which had been originally stated, his authorities did not consider that its present use in the television link between Berlin and Schwerin was highly strategic.
7. The CANADIAN and JAPANESE Delegates stated that their authorities raised no objection to this export.
8. The NETHERLANDS Delegate stated that his authorities did not think that the servicing procedure extended to diverted goods. They would raise no objection to this as an ad hoc request if the remainder of the Committee were unanimous in their approval.
9. The ITALIAN Delegate said that his authorities raised no objection to this request in view of the fact that it was meant to replace unserviceable Klystrons previously supplied.
10. The UNITED STATES Delegate said that it seemed fair to say that the Committee were dealing with a case that was tantamount to servicing embargoed equipment illegally procured in the first place. He asked how the United Kingdom authorities would view a case involving the servicing of embargoed equipment that had been illegally procured originally.
11. The UNITED KINGDOM Delegate thanked the Members of the Committee for the views they had expressed. He pointed out that the essential point of his case was that no net addition would accrue to the East German stock of Klystrons as a result of this export, which involved a very small and carefully calculated risk. The whole question was confounded by the misuse of the original equipment. The Delegate undertook to obtain the answer to the question put by his United States colleague and said that he would be interested to hear the further comments of the United States authorities on the legal aspects of this case. He reserved the right to return to this question at a later date.

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